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(Plus all the volunteer
help we can get)

October 23, 1990

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Public Safety

RULE: New Rule, Series 4; Modified Vehicle Inspection

DATE FILED AS AN EMERGENCY RULE: September 11, 1990

DECISION NO. 44-90

Following review under WV Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER
Secretary of State

FILED
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CHARLESTON, WV

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DECISION

EMERGENCY RULE DECISION
(ERD 44-90)

AGENCY: Division of Public Safety
RULE: New Rule, Series 4, Modified Vehicle Inspections
FILED AS AN EMERGENCY RULE: September 11, 1990

- par. 1 The Division of Public Safety (Public Safety) has filed the above new rule as an emergency.
- par. 2 West Virginia Code §29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 Public Safety filed this emergency rule with supporting documents with the Secretary of State on September 11, 1990 and with the LRMRC on September 11, 1990.

- par. 7 It is the determination of the Secretary of State that Public Safety has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- WV Code §17C-15-48(f) reads:
- (f) Modified vehicles must have a special inspection sticker which must be inspected by the thirty-first day of July, one thousand nine hundred ninety. The fee for the modified vehicle stickers will be twenty-five dollars with the department of public safety establishing rules concerning such inspection. Each municipal, county and state law-enforcement agency must record on accident report forms whether a modified vehicle was involved in the accident.*
- par. 9 This office has received several objections to the contents of this rule in the form of letters from Paul L. Shaffer II of Cross Lanes and L. Alvin Hunt of the Law Firm of Hunt and Wilson in Charleston. These letters are attached as Exhibits A and B. I will address the arguments concerning the contents of this emergency rule on a section by section basis.
- par. 10 Section 2.1 provides that any vehicle operated on the public highways with a gross vehicle weight of less than ten thousand pounds whose altitude has been modified from the original manufacture's specifications must be inspected. Mr. Hunt's letter contends that the ten thousand pound weight rating applies only to trucks. I have reviewed the provisions of §17C-15-48(b) and it is clear that the first sentence of this subsection provides that all motor vehicles that have been modified in their altitude must fall within the specified limits for their gross vehicle weight rating category. The subsection then goes on to provide the limits for trucks under ten thousand pounds. But the language of the first sentence of subsection (b) would apply these limits to all vehicles under ten thousand pounds. The response of the West Virginia State Police as represented by Master Sergeant R. D. Blankenship's letter, which is attached as Exhibit C, presents me with a common sense approach on how the state police inspectors will approach this situation. The provisions of section 2.1 are reflected in section 3.3 which reiterates the position that a modified vehicle is one that has been raised or lowered in altitude from the manufacturer's original specifications.
- par. 11 Section 2.2 provides for the inspection of modified vehicles by new car dealers whose vehicles have been modified or other dealers who are trained and updated on the original manufacturer's specifications for the vehicle lines involved. Mr. Shaffer's letter objects to this provision because it is not called for or specifically authorized in the bill. This argument is raised several times in the letters that object to the provisions of this rule. I would like to address this issue by pointing out that the provisions of §17C-15-48(f) provide that the Department of Public Safety is charged with "establishing rules concerning such inspection."

It seems logical that these rules cover those items that are normally covered by a standard vehicle inspection. It also follows that the Department of Public Safety will also have to provide for the inspection of items that logically flow from the modification of a vehicle in order to protect the safety of the general public. To adopt a narrow reading of this statute or any other statute involving this type of public safety would be a dangerous precedent. It seems to me that the West Virginia Code cannot be expected to provide for all contingencies in administering and executing a particular program. If this standard were followed, it would be several times its current size and there would be little need for the Code of State Rules. Therefore, I will accept the provisions of this or any other rule which reasonably interpret the statutory language involved with provisions that will continue to preserve public safety or welfare. I draw this interpretation from the definition of emergency legislative rules as provided for in West Virginia Code §29A-3-15. It seems to me that the Department of Public Safety's provision limiting inspections to dealerships that have actual training in the original manufacturer's specifications of these vehicles is very helpful in preserving the overall safety of these vehicles because these inspectors will be able to immediately identify changes to items such as the fuel system, brakes, transmissions and other items which contribute directly to the operational safety of any vehicle. Mr. Hunt's letter raises the observation that this rule will in effect bar any non-new vehicle dealers from inspecting these vehicles. I frankly feel that there may well be some operations in the State that are interested in inspecting these modified vehicles and that those operations should be required to familiarize themselves with the original manufacturer's specifications of these vehicles. If they are not willing to do this, then they should not be doing these inspections.

par. 12 Mr. Hunt's letter objects to including regulations on the inspection of fuel systems because many of the provisions go beyond the explicit prohibition in §17C-15-48 which says that modifications are not to expose the fuel tank itself to damage from collision. The State Police point out that many of these modified vehicles reroute the fuel lines due to the parts that have to be added to lift or lower the vehicle. Once again, it seems clear to me that this is a reasonable extension of the overall power of the Department of Public Safety to protect the overall safety or welfare of the motoring public by insuring that changes in the routing of these fuel lines are done in a safe way. Mr. Hunt's letter also raises the objections that sections 4.2 on doors and door latches, section 4.2.3 on hood and trunk latches are beyond the scope of the statute involved. The State Police point out that these two provisions have been added because there are several vehicles that will now be allowed on the road under this new section that will probably have changes in the doors and latch mechanisms as well as the

hood and trunk latches. These lowered vehicles present problems that must be dealt with in order to protect the drivers involved and once again this compelling need for preserving public safety will be enough to insure the emergency rule status of these provisions.

par. 13 The provisions of section 4.2.4 which have to do with adding fenders to cover larger tires is perhaps the most contentious issue in this proposed rule. I would like to point out that the rule also provides at section 4.8.11 that fender extensions cannot extend further than three inches from the original fender involved. So as Mr. Shaffer points out in his letter, this restriction does seem to be a way of limiting the overall tire size that can be placed on a vehicle. The State Police say that this requirement has been added to reduce the number of rocks and debris that are thrown from these vehicles. Mr. Hunt's letter points out that there is nothing in the official manual which coincides or corresponds with this requirement. Obviously the official manual has no such requirement since the wheel well requirements for cars and trucks more than cover this problem. This requirement seeks to reestablish the protection which is found in having wheel wells that surround tires that meet the manufacture's specifications for these vehicles. Anyone who has driven on the roads in West Virginia and has been subjected to the damage that can occur to one's vehicle as a result of flying debris and rocks will readily agree that this debris is a nuisance and that it can endanger public safety. Therefore, in order to maintain the public safety and welfare I find that the provisions of section 4.2.4 are acceptable for emergency rule status.

par. 14 The scrub line requirements of section 4.5.8 are objected to by Mr. Hunt because there is no mention made of a scrub line in the law or any other rule or regulation. Once again, this is because the vehicles on the road already meet safety standards that are built into the manufacturing of motor vehicles. Modified vehicles are often changed in their steering, braking and fuel systems so that a blow-out could render a part of one of these systems open to damage because they are below the rim of the wheel involved. This is obviously not only hazardous to the person driving the modified vehicle but to any other vehicle or object surrounding them at the time of the blow-out. Once again, this rule should be upheld because of its common sense approach to protecting the public safety and welfare.

par. 15. The provisions of section 4.8 have been brought into question in Mr. Hunt's letter because they limit the overall size of the tires that can be used to be no more than three inches beyond the original fender of the vehicle involved. I have already upheld the three inch rule because of its part in reducing the overall debris thrown from tires. I would also like to observe that Mr. Hunt's contention that the only restriction from the West Virginia Code on the width of a vehicle is set at

ninety-six inches in West Virginia Code §17C-17-2. This is an overall width of eight feet and it applies to all vehicles that are on the highway system. It seems to me to be totally illogical to say that a Chevy S-10 or Ford F150 pickup truck should be allowed to have tires that allow it to be eight feet wide without any coverage of those tires by fenders. This goes back to my earlier observation that the West Virginia Code clearly cannot provide for every contingency that is needed to protect the public safety and that is one of the primary reasons for having a Code of State Rules.

par. 16 Finally, Mr. Shaffer's letter objects to the requirement in Section 4.9 which says that any automatic transmissions which are added to these vehicles must have a interlock that causes the engines starter to be inoperative when the transmission lever is shifted to a forward or reverse drive position. This safety feature is standard in the automatic transmissions of most cars on the road today. I see no reason why these modified vehicles should be allowed to operate with a lower safety threshold.

par. 17 It is the determination of the Secretary of State that Public Safety has not exceeded its statutory authority in promulgating this emergency rule

par. 18 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 19 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 20 The facts and circumstances as presented by Public Safety are as follows:

On March 9, 1990 the West Virginia Legislature passed S.B. 386 relating to the alteration of motor vehicle suspension systems. This legislation became effective on June 9, 1990 and mandated that the Division of Public Safety establish rules governing the inspection of the aforementioned vehicles.

This legislation also mandated that these vehicles be inspected by July 1, 1990.

The attached emergency rule will allow the Division of Public Safety to immediately implement the mandated inspection procedures and will ensure that all modified vehicle inspections are carried out in a consistent manner that will ensure the safety of the motoring public. (See Exhibit C)

par. 21 Overall the objections to these proposed rules have failed because of the clear need to preserve public safety when vehicles are changed in such a way as to alter the manufacturer's configuration for that vehicle. In the case of many of the street roads in this rule, there are no manufacturer's configuration since these vehicles are pieced together. The Administrative Procedures Act clearly envisions the promulgation of emergency rules when it is necessary to fill in the gaps of a new law that deals with potentially dangerous vehicles on the public highway. Therefore, I find that the Department Safety has not violated the provisions of the Administrative Provisions Act by exceeding the scope of its statutory authority as defined in §17-15-48 and that the situation is an emergency due to the preservation of public safety and welfare. The rule is approved.

par. 22 This decision shall be cited as Emergency Rule Decision 44-90 or ERD 44-90 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Public Safety, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE Oct. 23, 1990

Entered _____

ADMINISTRATIVE LAW DIVISION